THE PROTECTION OF WOMEN AS THE VICTIM OF ECONOMIC ABUSE UNDER INTERNATIONAL HUMAN RIGHTS LAW IN INDONESIA

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Abstract - Indonesia is included as a state which already ratified the Convention on the Elimination of Discrimination Against Women (CEDAW) 1979. Those matters oblige Indonesian governments to give full protection to women regarding to crimes of violence. However, it also includes protection to the victim of economic abuse in family scope. The annual report of Women Commission show that economic abuse on family scope is always happen in every year. Article 9 of Law No 23 of 2004 on the Elimination of Domestic violence regulated economic abuse as a form of domestic violence. The aim of this research is to describe the protections of economic rights for women covered by International Human Rights Law in Indonesia and to describe the responsibility of Indonesian government to protect women as the victim of economic abuse. This research is conducted under normative method. The data used in this research comes from primary sources such as statutes, Law, decision, or regulation and secondary sources, which includes legal textbook, papers and journals. Both sources then combined with tertiary sources, such as dictionary. Indonesian stipulated the equality and nondiscrimination on women’s economic rights under the 1945 Constitution, Law No. 39 of 1999 on Human Rights, the Law No.13 of 2003 on Labor and Law No. 1 of 1974 on Marriage. In term of avoiding economic abuse in family scope Indonesian government also established the Law No. 23 of 2004 on the Elimination on Domestic Violence. The article found that one of the biggest problems is the need of women’s victim protection when they made the report on the economic abuse cases. Domestic Violence Law has been provided the protection and recovery towards the victim of economic abuse. Furthermore, Indonesia Government has also established National Commission on Violence against Women to help the women’s victim acquire their rights. In the provincial/district level, Integrated Services Center for Women and Children was established in each area. Local and provincial efforts are the key solution on the enforcement issue. The government whether national, provincial, and regional has to socialize the economic abuse and women’s economic rights to make sure that they are aware on their rights. The evaluation towards the implementation of law No. 23 of 2004 on the Elimination of Domestic Violence is needed to know how the efficiency of this law.

Keywords: Women Protection, Victim, Economic Abuse, Human Rights Law.

INTRODUCTION

The practices of violence against women happened in every country, beyond of culture, class, education, income ethnicity and age. Moreover, violence against women can also occur in a place where should be the safest place. In some cases, a huge violence was received from somebody who really closed to them. Statistic estimates that between 20 and 50 percent of women in every country has experienced domestic violence at the hands of an intimate partner or family member.1

Domestic Violence is a human rights issue. Freedom from violence including whether sexual, mental, emotional, financial or physical is a fundamental rights. The most crucial consequence of domestic violence is the denial of fundamental human rights to women. Domestic violence is including as gender based violence. Gender-based violence is a form of

discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.\textsuperscript{2} There is discrimination between men and women as a victim of domestic violence, including economic abuse. Violence in the domestic sphere is usually perpetrated by males who are, or who have been, in positions of trust and intimacy and power.\textsuperscript{3} Women are the victim of 76\% of reported cases of domestic violence.\textsuperscript{4}

Domestic violence does not always in form physical and sexual abuse. There is a subset of domestic violence that is rarely known as violation, economic abuse. It’s when one partner in a relationship has control over the other partner’s finances, including their ability to have, earn or use money. This kind of abuse is present in 98\% of abusive relationships, according to the National Network to End Domestic Violence.\textsuperscript{5}

Indonesia is includes as a state which already ratified some of the instruments of International human rights. It has ratified six instruments of international human rights, including CEDAW, ICESCR and ICCPR.\textsuperscript{6} They become legally binding to Indonesia. Therefore, Indonesia has the obligation to apply all ratified instruments and creating the national law supporting those instruments.

Indonesia ratified the CEDAW by Law No. 7 of 1984 on the Ratification of the Convention on The Elimination of All Form of Discrimination Against Women.\textsuperscript{7} Those matters oblige Indonesian governments to give full protection to women regarding to crimes of violence. It also includes the protection in economic abuse in family scope. The economic rights of women in family has been regulated on Article 11, 13, and 16 of CEDAW. As the result, Law No. 23 of 2004 on the Elimination of Domestic Violence has been created by Indonesia in order to eradicate domestic violence and to fulfill its obligation to protect women from the violence in domestic area including economic abuse which is stated on Article 9 of the Elimination of Domestic Violence.

Annual report by National Women’s Commission shows that the highest number of violence against women is the cases on domestic sphere. It reported that 13.602 cases of

\textsuperscript{2} General Recommendation made by the Committee on the Elimination of Discrimination against Women No. 19 (Iith session, 1992)
\textsuperscript{5} Ibid.
\textsuperscript{7} Ibid.
violence against women were reported which 75% of them are included as domestic violence.\textsuperscript{8} Those data shown that violation in domestic sphere against women is main problem why Indonesia has a highest number in the cases of violence against women. Economic abuse is one of violation that suddenly happened in domestic sphere. The data shown 971 cases of economic abuse are reported in 2015. Furthermore, the number of cases increased to 978 cases in 2016.\textsuperscript{9} It proved even if Indonesia has ratified six instruments of international human rights and made national regulation to restrain economic abuse in domestic violence, but the practice is not going well. Economic abuse still happened; women are still under threatened of violation.

Therefore, based on description above, the researcher interested to discuss and analyze those problems on this article under the title “The Protection of Women as the Victim of Economic Abuse under International Human Rights Law in Indonesia”.

\textbf{RESEARCH METHODOLOGY}

The method of this research is normative legal research method. Normative legal research method is a process to find a legal rules, legal principles, and doctrines of the law to address the legal issue at hand. This method used to achieve the purpose of this research to conform the legal instrument that is applied on the discussed issue in this research.\textsuperscript{10} The method will describe and explain comprehensively the right of women as the victim of economic abuse in domestic violence under International Human Rights Law. It is also used to answer the research question as identical problem in this research.

The Data obtained from primary, secondary and tertiary will be processed and analyzed by using qualitative approach in answering the question of research. The qualitative type of analysis is derived from the data accumulation which is carried on library research or documentary data approach. The data is analyzed systematically and non-subjectively regarding to the issue arisen in this research

\textsuperscript{8} Komnas Perempuan, Labirin Kekerasan terhadap Perempuan: Dari Gang Rape hingga Femicide, Alarm bagi Negara untuk Bertindak Tepat, Lembar Fakta Catatan Tahunan (CATAHU), 2017

\textsuperscript{9} \textit{Ibid.}

\textsuperscript{10} George, Mary W. The Elements of Library Research: What Every Student Needs To Know. New Jersey; Princeton University Press, 1948, p. 20
Diiscussion

1. THE PROTECTION FOR WOMEN AS THE VICTIM OF ECONOMIC ABUSE IN INDONESIA
   a. The Protection Of Economic Rights For Women Covered By International Human Rights Law In Indonesia

As a member of United Nation, Indonesia has a strong commitment to the promotion and protection of human rights. It is shown by the willingness of Indonesian government to ratify the instruments of International Human Rights. The global movement to address gender-based violence influenced a change in Indonesian policies toward more gender responsiveness. The three international milestones that significantly influenced Indonesian gender policy are the launch of the 1993 UN declaration on the Elimination of Violence against Women (DEVAW), the 1994 Cairo Conference on Population and Development, and the Fourth World Conference on Women held in Beijing during 1995. \(^{11}\) The obligation of Indonesia to protect human rights will be entirely applied if there is consent of Indonesian’s government to protect women’s rights equal and no discriminated in every circumstance. The action must be concretely done by creating national regulation whether by central or regional government.

The provisions of women’s rights in Indonesia are regulated in Article A-J of the 1945 Constitutional, Law No. 39 of 1999 on Human Rights, and Law No. 7 of 1984 on the ratification of CEDAW. Those regulations states that state will eliminate all form of discrimination against women in Indonesia. It is also included the regulation to protect women in economic abuse on domestic scope.

Women have a right to State protection even within the confines of the family home. The economic abuse in domestic scope is perpetrated when legislation, law enforcement and judicial systems condone or do not recognize domestic violence as a crime. \(^{12}\) The establishment of Anti Domestic Violence Law was proposed by women's activists because the relevant Articles of the Indonesian Penal Code were deemed to be weak and failed to protect the victims. The Code basically does not recognize the term ‘domestic violence’ and only regulates penalties for violence in public places. \(^{13}\) In spite of its serious repercussions, domestic violence is viewed only as an ordinary issue within one’s private life.

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\(^{11}\) Elli Nur Hayati, Domestic violence against women in rural Indonesia, Searching for multilevel prevention, Series No 1617, Umeå University Medical Dissertations, 2013, p. 18.


In 2004, Indonesia stipulated Law No. 23 of 2004 on the Elimination of Domestic Violence. The new law has accommodated different perspectives in viewing the problem. It has laid down three fundamental principles that are not catered for in the penal code, namely; a) protection and enforcement of human rights, b) gender equality and justice, and c) equitable social relation and protection of victims.\textsuperscript{14}

The government of Indonesia has been regulating the economic rights of women in some national law. The economic rights for women are enacted on the 1945 Constitutional, Law No. 39 of 1999 on Human Rights, Law No. 7 of 1984 on the ratification of the Convention on The Elimination of All Form of Discrimination Against Women (CEDAW) and Law No. 23/2004 on the Elimination of Domestic violence. As the highest hierarchy in Indonesia, the 1945 Constitutional provide basic rights that must be enjoyed by its citizen. The basic rights are included that everyone has the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted based on retroactive.\textsuperscript{15}

The economic rights are mentioned on Article 27 (2), 28D (2), and 28H (4) of the 1945 Constitution. The 1945 constitution basically explain that economic rights are right to work, right to decent living, right to life, right to receive fair treatment and wages in the employment relationship, rights to social security, rights to have private property, and rights to prohibited acts related to the economics. Those are the basic economic rights that expressly in 1945 Constitution. No action or regulation can be done if it contradicts with the constitution.

The adoption of CEDAW by the General Assembly in 1979 is followed by the ratification of states member. Indonesia signed the convention as the step to fulfil women’s rights in Indonesia. On July 24, 1984, the convention was ratified with Law No. 7 of 1984 on the Ratification of the Convention on The Elimination of All Form of Discrimination Against Women.\textsuperscript{16} Article 3 of CEDAW obliges that state has to make sure that the rights of women on political, social, economic and cultural must be protected, fulfilled, and respected. The right to work was regulated in article 11 of CEDAW by obliging state to take any measures to achieve an equality of rights to work between men and women. Currently, Indonesia has

\textsuperscript{14} Ibid.
\textsuperscript{15} Article 28 of The 1945 Constitution
\textsuperscript{16} Sabungan Sibarani, Prospek Penegakan Hukum Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT), Jurnal Hak Asasi Manusia Volume 7 No. 1, 2016. p. 4.
already created Law No. 13 of 2003 on Labor. Indonesia Labor Law has regulated that every employee has the same opportunity without discrimination to get a job and every worker/laborer has the right to be treated the same without discrimination by an employer.\textsuperscript{17} The right to family benefit and the right to bank loans, mortgages and other financial credit of women were stated on Article 13 of CEDAW. Those rights were guaranteed by Indonesia under Law No 1 of 1974 on Marriage which regulates the rights and duties of husband and wife in family and Law No. 23 of 2004 on the Elimination of Domestic Violence which protects the victim of all kinds of the abuse in the family.

44 years after the declaration of Indonesian independent, Law No.39 of 1999 on Human Rights was enacted. This law regulates further about human rights that is provided in the 1945 Constitution. Law No. 39 of 1999 on Human Rights contains a wide recognition of human rights.

It stated in the article 3 (3) which possessed everyone is entitled to the protection of human rights and fundamental human freedoms, without discrimination. Article 30 stated that everyone is entitled to a sense of security and assurance as well as protection against the threat of fear to do or not do something. Article 36(1) stated that everyone has the right to have property, either alone or together with others for the sake of the development of him, family, nation, and society in a way that does not violate the law. Article 38 (1) stated that all citizens have the right to work, in line with his or her ability and capacity. No one may force or prohibit women to not working and putting them under someone’s financial power which is made them lost the enjoyment of their rights. Husband still have the obligation towards his family including the obligation to provide maintenance to his family member. Article 51 (1) stated that during marriage, a wife and husband have equal rights and responsibilities with regard to all aspects of marriage, contact with their children, and rights to joint control of assets. This Article emphasize that the responsibility to manage the household and to take care of children either financial or any other household needs is not only the obligation of wife

In 2004, the law no.23 of 2004 on the Elimination of Domestic Violence was created by Indonesian government. Article 9 of Anti Domestic Violence Law divides economic abuse in two categories. First, anyone shall be prohibited to neglect an individual within the scope of the household, whilst in fact according to the law prevailing on him/her or on

\textsuperscript{17} Articles 5-6 of Law No. 13 of 2003 on Labor
account of acceptance or agreement he/she shall obliged to provide livelihood, treatment, or care for the individual. Second, the negligence referred to in paragraph 1 shall also apply to anyone bringing about economic dependence by limiting and/or prohibiting an individual to work properly inside or outside the house thereby the victim is placed under the control of the individual. Those two forms of economic abuse can be punished by article 49 of Anti Domestic Violence Law. This article provide criminal punishment in form of imprisonment of maximum 3 (three) years or maximum fine Rp15.000.000,- (fifteen million rupiah).

b. Indonesian Government Responsibility To Protect Women As The Victim Of Economic Abuse

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of States, thereby conferring on States responsibility for the human rights of individuals.18 State responsibility for human rights can be examined at three levels; the obligation to respect, the obligation to protect, and the obligation to fulfill human rights. Indonesian government has the responsibilities include the obligation to take pro-active measures to ensure that women’s rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory. Therefore, Indonesia government initiated the establishment of a National Commission on Anti-Violence against Women, endorsement of a law recognizing domestic violence as a criminal act, and agreement between several ministries to provide services for women survivors of domestic violence.19

Indonesian government is up against the economic abuse in domestic sphere by created the Law No.23 of 2004 on the Elimination of Domestic Violence. This is the first Indonesian domestic law specifically regulates a violation in domestic sphere, including the form of economic abuse. Before the existence of this law, the perpetrator of economic abuse is only limited on providing maintenance towards family members that can be charged under Indonesian Penal Code, but it rarely assumed as a serious violation.20 The increasing of reported cases on the violation in domestic sphere since the establishment of Anti Domestic Violence Law in 2004. It is because Indonesian Penal Code did not recognize economic

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abuse in family as a violation. The difficulty to found an evidence made economic abuse never been processed.\textsuperscript{21}

Article 10 of Anti Domestic Violence Law entitled five rights of victim of economic abuse. First is the protection of the family, police, district attorney office, a court, advocate, social institution, or another party either temporary or based on the ruling on protection instruction of a court. The second is health service in accordance with medical need. The third is special handling related to confidentiality of the victim. The fourth is counter parting by a social worker and a legal aid worker at each examination process level in accordance with the stipulations of laws and regulations. The last is spiritual guidance service.\textsuperscript{22}

Basically, there are two kinds of legal protection towards women as the victim of economic abuse which conducts on preventive and repressive way.\textsuperscript{23} Article 12 of Anti Domestic Violence Law stipulates four government obligations in preventive way:\textsuperscript{24} those are included the formulation of policy regarding elimination of violence in household; the organized communication, information, and education regarding violence in household; organized socialization and advocacy regarding violence in household; and the organized gender-sensitive education and training on and the issue of violence in household and shall establish gender sensitive service standard and accreditation. Article 13 of Domestic Violence provides the repressive action by the government. Those are included the provision of special service room at a police station; the provision of officials, health personnel, social workers, and spiritual mentors; the preparation and development of service program cooperation system and mechanism involving a party that is easily accessible to the victim; and the provision of protection for counterpart, witness, family, and friend of the victim.

Anti Domestic Violence Law not only provides the rights of the victims and the obligation of government to protect their rights but also provide the rehabilitation of victim of economic abuse.\textsuperscript{25} The proceeding procedural on the rehabilitation of victim in Law No. 23 of 2004 on the Elimination of Domestic Violence is regulated on Government Regulation No. 4 of 2006 on the Procedural and cooperation of the recovery on Victim of Domestic Violence.


\textsuperscript{22} Article 10 of Law no.23 of 2004 on the Elimination of Domestic Violence.


\textsuperscript{24} Article 12 of Law no.23 of 2004 on the Elimination of Domestic Violence.

\textsuperscript{25} Articles 39-43 of Law no.23 of 2004 on the Elimination of Domestic Violence.
One independent commission, namely the National Commission on Violence against Women was established in 1998 as the first national mechanism to address violence against women, including the violation of women’s economic rights. The establishment of the commission is based on article 1 of President Decree No. 65 of 2005 on the National Commission on Violence against Women. It undertakes the work programs on the enforcement of women victim’s rights. The rights of victim include the rights of truth, the rights of justice, and the rights of recovery. In term of committed its work; women commission developed five main programs which are reformation of law, education and public campaign, the recovery of victims, monitoring women’s rights violation and partnership.

The governmental bodies at provincial and district levels are obligated to set up certain facilities, which include special units within the police department, crisis centers, shelters, and available experts or other professionals in the field. Integrated Services Center for Women and Children (Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak) is one of Bureaus of Women Empowerment to empower and protect women towards all form of discrimination and violation against women. It was established by provincial government at the district level. There are 33 provinces and 242 districts which establish The Integrated Services Center for Women and Children. It is arranged by governmental elements, society, women NGO, women’s study center, and women organization in each provincial/district. Integrated Services Center for Women and Children has four main programs, Including victim’s service and recovery, mentoring and advocacy, research and study, and monitoring. Victim service and recovery is committed in form of medical action toward the victim of physical or non physical abuse, counseling guidance, and treatment therapy.

Relating to the economic abuse cases, Integrated Services Center for Women and Children has the main role to fulfill the rights of victim through legal assistance. Women victim of economic abuse in family scope have to get a legal assistance by advocate in court process. This service center will help the victim in the process of investigation and in the process to report the economic abuse that was faced by them.

CONCLUSIONS

The ratification of international human rights instrument by Indonesia arise the obligation to provide the rights on national law. Indonesia recognizes women’s rights by the ratification of CEDAW on 1984. Articles 11, 13, 16 of CEDAW require state parties to stipulate women’s economic rights especially on the family scope. Furthermore, the application of those articles has been regulated on national law of Indonesia. Indonesian stipulated the equality and nondiscrimination on women’s economic rights under the 1945 Constitution, Law No. 39 of 1999 on Human Rights, the Law No.13 of 2003 on Labor and Law No. 1 of 1974 on Marriage. In term of avoiding economic abuse in family scope Indonesian government also established the Law No. 23 of 2004 on the Elimination on Domestic Violence. Economic abuse regulated on article 9 of Anti Domestic Violence Law.

The data shown economic abuse in family scope is serious number on violation against women in Indonesia. The article found that one of the biggest problem is the needed of women’s victim protection when they made the report on the economic abuse cases. Anti Domestic Violence Law has been provided the protection and recovery towards the victim of economic abuse. Furthermore, Indonesia Government also has established National Commission on Violence against Women to help the women’s victim acquire their rights. In the provincial/district level, Integrated Services Center for Women and Children was established in each area. Now, there are 33 provinces and 242 districts which establish The Integrated Services Center for Women and Children. Both Women Commission and The Integrated Services Center for Women and Children have the main role to fulfill the rights of women as the victim of economic abuse in family scope.

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